

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

State Building Code Appeals Board¹
Docket No. 05-305

John R. Rivers,)
Appellant,)
)
v.)
)
City of Malden and Paul)
Johnson,)
Appellees)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("the Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3 the Appellant requests that the Board reverse a stop work order issued by City of Malden Building Inspector, Paul Johnson ("Inspector Johnson") as a result of the Appellants alleged violations of 780 CMR 113.4, 780 CMR 3604.1.2 and 780 CMR 3604.3.1(4) of the Massachusetts State building code ("MSBC"). The Appellant also request that the Board render an interpretation on whether the building permit issued to the Appellant has expired. In accordance with MGL c. 30A, §§ 10 and 11; MGL c. 143, §100; 801 CMR 1.02 et. Seq.; and 780 CMR 122.3.4, the Board convened a public hearing on October 5, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

At the hearing the Appellant, John R. Rivers, Trustee of the Rivco One Realty Trust ("Appellant") appeared pro se. Present and representing the City of Malden Building Department was Paul Johnson ("Building inspector"). Though notified, there was no representative present from the City of Malden Fire Department.

¹ The scope of this Board's jurisdiction lies only within the provisions of the Massachusetts State Building Code. The action taken by this Board in this decision reflects the full extent of this Board's jurisdictional authority. The Appellant remains responsible for complying with all other applicable state and local codes.

Exhibits²

The following Exhibits were entered into evidence:

- Exhibit 1: Photograph of abutter's fence and placement of the fill at 55-57 Neal Street, Malden, MA.
- Exhibit 2: Photographs of the site conditions at 55-57 Neal Street, Malden, MA.

Findings of fact

1. The subject property is a proposed two family home located at 55-57 Neal Street, Malden, MA.
2. On or about February 28, 2006 the Appellant was issued a building permit (no. 644) to construct the footing and foundation for the subject property.
3. The City of Malden renders a building permit void if it is determined that the permit holder failed to commence work under the permit within 90 days of its issuance or if operations under the permit are discontinued for more than six months.
4. The Appellant commenced construction at the subject property within 90 days of the issuance of permit no. 644. In order to prepare the subject property for the installation of the footing and foundation the Appellant needed to place and compact four to sixteen feet of fill. Therefore the Appellant cleared the land by cutting down trees, stripping out the base and bringing in ledge for the fill. The ledge was choked in layers of 1 foot ½ inches and 2 feet and compacted with a 70,000 pound machine and hand compactor.
5. On or about June 8, 2006 Inspector Johnson issued a stop work order to the Appellant demanding that he Cease and Desist all work at the subject property. The order was issued because Inspector Johnson believed that the fill used at the subject property was not engineered fill and it was placed and compacted improperly; and the loosely placed fill on the subject property created a safety concern for the abutters. Inspector Johnson also noted in his order that the Appellant's building permit no. 644 had expired.
6. The Appellant did not discontinue operations under said permit for more than six months. The construction work at the subject property was continuous up until the Appellant received the Cease and Desist order from Inspector Johnson.
7. The City of Malden does not require a building permit for the placement of fill. The usual course of business for the City of Malden when a house is to be constructed is to issue a permit for footing and foundation. Therefore, the permit issued to the Appellant is in accordance with the Building department's usual course of business.
8. The Appellant has not submitted any engineered reports or plans to the City of Malden Building Department detailing how the structure will be built.

² The Board takes administrative notice of its own records. 801 CMR 1.01(10)(h)(administrative notice); M.G.L. 30A, §11(5).

9. UTS of Massachusetts, Inc.³ conducted a site inspection at the subject property on June 14, 2006 and site report was generated, on June 16, 2006, addressing issues with the building pad construction rather than the entire property.

Discussion

A motion was made to reverse Inspector Johnson's interpretation that building permit no. 644 had expired. It appears that the Appellant did perform work at the subject property during the required period and therefore the permit had not expired. Although the permit issued by the City of Malden Building Department was for the construction of footing and foundation the Appellants work in the placement and compaction of the fill is work that must precede the work to be performed under building permit no. 644. Because the City of Malden does not issue permits for fill and it is their usual practice to issue a permit to construct footing and foundation then the Appellant has appropriately commenced work under building permit no. 644.

This Board will not reverse the stop work order issued to the Appellant by Inspector Johnson. The Appellant has 90 days to obtain engineered plans for protecting the properties of the abutters, for removing debris from the subject property that is not proper for engineered fill and to submit report(s) prepared by a structural engineer for the engineered fill that will be placed at the subject property as well as the fill that has been placed at said property. The Appellant has 90 days to submit the stamped engineered reports and plans to the building department. If said reports and plans are not submitted within 90 days from the date of this decision the building permit no. 644 will be deemed expired by this Board. Motion carried 3-0.

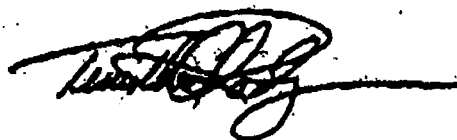
Conclusion

Based upon the foregoing the Appellant's building permit no. 644 has not expired and this Board will not reverse the Building Inspectors Stop work order.

SO ORDERED.

³ UTS of Massachusetts specializes in testing, evaluation and inspection of construction materials and practices.


HARRY SMITH


TIMOTHEE RODRIQUE


BRIAN GALE

DATED: December 7, 2006

** In accordance with M.G.L. c. 30A § 14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after receipt of this decision.*